



# OFFICIAL GAZETTE

## GOVERNMENT OF GOA

### SUPPLEMENT

#### GOVERNMENT OF GOA

Department of Labour

#### Notification

No. 28/18/2007-LAB/19

The following Award passed by the Industrial Tribunal of Goa at Panaji-Goa on 30-11-2007 in reference No. IT/48/2003 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*B. S. Kudalkar*, Under Secretary (Labour).

Porvorim, 3rd January, 2008.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT-I AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/48/2003

Deepak Mathkar,  
H. No. 73, (ILL)/10,  
Khorlim, Mapusa,  
Bardez-Goa.

... Workman/Party I

V/s

Mapusa Urban Co-op. Bank of Goa Ltd.,  
"Nandadeep",  
Mapusa,  
Bardez-Goa.

... Employer/Party II

Party I/Workman is represented by Adv. A. V. Nigalye.

Party II/Employer is represented by Adv. P. J. Kamat.

#### AWARD

(Passed on this 30th day of November, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

Facts of present reference, stated in brief, are as follows:

1. The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under order dated 16-7-2003 has referred to this Industrial Tribunal following dispute for adjudication:

"(1) Whether the action of the management of the Mapusa Urban Co-op. Bank of Goa Ltd., Mapusa, Goa, in terminating the services of Shri Deepak Mathkar, Clerk, with effect from 15-9-1997 is legal and justified ?

(2) If not, to what relief the workman is entitled ?"

2. In response to notices, both parties put their appearance in this Industrial Tribunal. Party I presented his claim statement on 17-10-2003 at Exb. 5. It appears from claim statement that the Party II is a Co-op. Bank registered under the Maharashtra Co-op. Societies Act, 1960, and the Rules made thereunder as applied to the State of Goa. It is the scheduled bank governed by notifications and regulations issued by the Reserve Bank of India and other concerned Authorities.

3. The Party I who claims to be a workman was employed in establishment of Party II as temporary Assistant Clerk w.e.f. 3-1-1995, and as Probationary Clerk w.e.f. 1-10-1996. He was working in Mapusa Branch of the Party II. He came to be transferred by Party II under its order dated 5-8-1997 to its Sanquelim Branch w.e.f. 12-8-1997. By order dated 27-8-1997, the Party II suspended him from service with immediate effect on

false found that he was not discharging his duties efficiently. Neither chargesheet was issued nor departmental inquiry was held before he came to be suspended from service. The Party II terminated his service by letter dated 15-9-1997 with immediate effect by making allegation that he was involved in fraud which had taken place in the department where he was working. The termination is stigmatic and of punitive nature. He was in continuous service of Party II for more than two and half years. The Party II terminated his service without issuing chargesheet or without holding departmental inquiry against him. He is not given opportunity of being heard. He has not been given one month's notice in writing or paid in lieu of such notice wages for the period of the notice, and retrenchment compensation. The termination of his service is illegal and unjustified. He made representations for several times to Party II to reinstate him in service. The Party II did not consider his request. He raised dispute before the Assistant Labour Commissioner, Mapusa. Conciliation proceedings held by the Asstt. Labour Commissioner ended in failure. Therefore, the Government of Goa under its order dated 16-7-2003 has referred the dispute for adjudication to this Industrial Tribunal as stated earlier.

4. The Party I by presenting the claim statement has requested to hold that the termination of his service by the Party II w.e.f. 15-9-1997 is illegal and unjustified and for direction to the Party II to reinstate him in service with full back wages, with continuity in service and with all other consequential benefits.

5. The Party II filed its written statement on 6-1-2004 at Exb. 6 and thereby, resisted the claim made out by Party I. It appears from the written statement that there is a delay of five years by Party I in raising the dispute. Termination of service of Party I constitutes a dispute within meaning of Section 91 of the Maharashtra Co-op. Societies Act, 1960, as applied to the State of Goa. Therefore, the reference is not maintainable. The Party I was appointed w.e.f. 1-10-1996 in establishment of the Party II as a Probationary Clerk. Prior to that, he had worked as a Trainee Assistant Clerk in establishment of the Party II for fixed periods in respect of which appointment letters are given to him separately. He was suspected to be involved in fraud amounting to Rs. 73,000/- during his probation period. The Party II decided to investigate into the fraud. Therefore, the Party II kept him suspended from service by letter dated 27-8-1997. On investigation carried out by outside agency, it was revealed that the Party I was involved in the fraud. The Party II lost confidence in Party I. As a result, the Party I terminated his services by letter dated 15-9-1997. The termination is legal and justified. On these and the above grounds, the Party II entreated not to grant any reliefs claimed by him.

6. The Party I submitted his rejoinder on 13-2-2004 at Exb. 7. To put in nutshell the Party I in the rejoinder denied all contentions which are raised by the Party II

in its written statement and which are adverse to his interest. It is needless to reproduce the denials.

7. On basis of pleadings the then learned Presiding Officer framed issues on 3-3-2004 at Exb. 8. The issues are recast by me on 26-11-2007 at Exb. 16. The recast issues are as follows:

1. Whether the reference is maintainable ?
  2. Does the Party I prove that termination of his services by Party II is illegal and unjustified ?
  3. To what relief Party I/Workman is entitled ?
  4. What Award ?
8. My findings on the above issues are as follows:
1. In the affirmative.
  2. In the affirmative.
  3. Entitled to reinstatement with back wages except for the period from 15-9-97 to 6-11-2002, with continuity in service and with consequential benefits.
  4. As per final order below.

#### REASONS

9. *Issue No. 1:* Party II has challenged maintainability of the reference on two grounds that: (1) there is delay of five years in raising dispute by the Party I, and (2) dispute covered by the reference constitutes dispute within meaning of Sec. 91 of Maharashtra Co-op. Societies Act, 1960, as applied to the State of Goa.

10. The Hon'ble Supreme Court held in case of *National Engineering Industries Limited Appellant v/s State of Rajasthan and others, respondents, reported in (2000) 1 SCC 371* and which is placed before me by learned Advocate of Party I that:

*"The Industrial Tribunal is the creation of statute and it gets jurisdiction on the basis of reference. It cannot go into the question on validity of the reference."*

11. Relying upon the above decision given by the Hon'ble Supreme Court, I hold that plea raised by Party II regarding maintainability of the reference cannot be taken into consideration.

12. The Party I is terminated from service under letter dated 15-9-1997 (Exb. W-4) with immediate effect. The Party I made representations to Chairman of the Party II on 31-12-1997 and then on 10-7-2001 with request to re-investigate into the allegations of fraud made against him and to reinstate him in the service. Carbon copy of representation dated 31-12-1997 and xerox copy of representation dated 10-7-2001 are produced at Exb. W-5 and at Exb. W-6 respectively. The

Party II did not consider request of Party I. Therefore, the Party I raised the dispute before the Assistant Labour Commissioner, Government of Goa, at Mapusa on 6-11-2002. It follows that the dispute which was raised by Party I before the Assistant Labour Commissioner was after five years approximately from the date of termination of his service.

13. Learned advocate of Party I argued that though there is a delay of five years in raising dispute by Party I before Assistant Labour Commissioner, that cannot be a ground to hold that the reference is not maintainable. To support his argument he relied upon decision given by the Hon'ble Supreme Court in case of *GM, Haryana Roadways... Appellant v/s Pawan Kumar... Respondent, reported in (2005) 12 SCC 459*. It appears from facts of this reported case that the respondent was prevented from working by the appellant after December, 1991. He did not raise dispute till 14-10-95. The Hon'ble Supreme Court held in this reported case that:

*"It is settled law that the mere factum of delay in raising a dispute by itself does not bring the dispute to an end. The delay in raising the dispute, however, may be taken into account in the matter of grant of relief."*

14. Relying upon the above decision given by the Hon'ble Supreme Court, I hold that, though there is approximate delay of five years in raising dispute by Party I before Assistant Labour Commissioner, that does not bring the dispute to an end. This position is fairly conceded by learned advocate of Party II during course of his argument. I therefore, do not find merits into the first ground raised by the Party II to challenge maintainability of the reference.

15. So far, second ground raised by Party II to challenge maintainability of the reference is concerned, it is not in dispute that the Party II is registered under Maharashtra Co-op. Societies Act, 1960, as applied to the State of Goa. There is no evidence especially on behalf of the Party II to prove that the Party I is its member and that the dispute is between Co-op. Society and its member relating to business of the Society. In other words, the Party II did not lead evidence to prove that the dispute covered by the present reference comes within the scope of Sec. 91 of the Maharashtra Co-op. Societies Act, 1960, as applied to the State of Goa. The second ground raised by the Party II to challenge maintainability of the reference also must fall to the ground.

16. The Party I is a workman within meaning of Sec. 2(2) of the said Act, 1947. There is a dispute between employee and employer i.e. the Party I and Party II respectively and it is connected with employment of the Party I. It follows that there is an industrial dispute as defined in Sec. 2(k) of the said Act, 1947. The Government was of the opinion that an industrial dispute exists between the parties and therefore, it has referred the dispute to this Industrial Tribunal for adjudication.

In view of this position and of decisions given by the Hon'ble Supreme Court in the reported cases alluded supra, I hold that the reference is maintainable. My answer to the issue is in affirmative.

17. *Issue No. 2:* The Party I filed his own affidavit in evidence at Exb. 10. It appears from the affidavit and also from termination letter produced at Exb. 4 that the Party I is terminated from service w.e.f. 15-9-1997. Party II terminated his service on the allegation that he was involved in a fraud which was committed in department where he was working and which is detected after carrying out investigation by private agency. The termination of his service is without holding departmental enquiry, without giving him opportunity of being heard and without making compliance with provisions contained in Sec. 25F of the said Act, 1947.

18. Party II filed affidavit of its General Manager, Joaquim D'Souza at Exb. 11. The affidavit coupled with notice of termination (Exb. W-4) discloses that the Party II terminated service of Party I with immediate effect on allegation that he is involved in fraud amounting to Rs. 73,000/-. Such termination of service as rightly pointed out by learned advocate of Party I is stigmatic and of punitive nature. Though there is no evidence, except affidavit of the General Manager, even for the sake of argument assuming that the Party II investigated into the fraud through private agency. It was not proper for the Party II to take action of termination which is of extreme nature against the Party I on basis of such investigation. Principle of natural justice requires that it was necessary for the Party II to give opportunity to the Party I of being heard and to hold departmental inquiry into the allegation of fraud. Nothing such has been done by the Party II. I, therefore, hold that termination of service of the Party I by the Party II is illegal and unjustified.

19. One more ground which is pressed into service by Party I in its claim statement and also by his learned advocate in his argument to claim termination of service of the Party I as illegal and unjustified is that the Party II did not comply with mandatory provision contained in Sec. 25-F of the said Act, 1947. This section lays down that:-

*No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—*

- (a) *the workman has been given one months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) *the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

20. Learned advocate of Party I further pointed out in his argument that the Party I was in continuous service of Party II as Trainee Assistant Clerk w.e.f. 3-1-1995 to 10-9-1996 and as Probationary Clerk w.e.f. 1-10-1996 till the date of termination of service i.e. till 15-9-1997 which is apparently not less than one year. It was necessary for the Party II to comply with conditions precedent to retrenchment of the Party I and which are laid down by Sec. 25F of the said Act, 1947. The Party II did not make such compliance. As a result according to him, it will have to be held that termination of service of Party I is illegal and unjustified.

21. In reply, learned advocate of Party II argued that the Party I was not in continuous service for not less than one year under the Party II. Therefore, it was not necessary for the Party II to make compliance with provisions contained in Sec. 25-F of the said Act, 1947.

22. The Party I admitted in his cross examination that he was appointed as Trainee Assistant Clerk during period from 3-1-95 to 3-3-95, from 13-3-95 to 11-5-95 from 1-6-95 to 30-7-95, from 9-8-95 to 7-10-95, from 17-10-95 to 15-11-95, from 20-11-95 to 19-12-95, from 22-12-95 to 20-1-96 from 31-1-96, to 29-2-96, from 7-3-96 to 5-4-96, from 8-5-96 to 6-6-96, from 10-6-96 to 9-7-96, from 11-7-96 to 9-8-96, from 12-8-96 to 10-9-96, from 12-9-96 to 11-10-96 and lastly as Probation Clerk from 1-10-96 till the date of termination of his service i.e. till 15-9-97. If the periods during which the Party I was working as Trainee Assistant Clerk are taken into consideration, it becomes crystal clear that he was never in continuous service of not less than one year under the Party II till he came to be appointed as Probation Clerk w.e.f. 1-10-96. I, therefore, do not agree with argument advanced by learned advocate of Party I that the Party I was in continuous service from the date of initial appointment as Trainee Assistant Clerk till the date of termination of service.

23. It reveals that the Party II came to be appointed as Probationary Clerk w.e.f. 1-10-96 before his earlier period which was from 12-9-96 to 11-10-96 as Trainee Assistant Clerk came to end. He was in continuous service of the Party II from 1-10-96 to 15-9-97. His continuous service as Probationary Clerk is more than 330 days but not of one year. Under this circumstance, it will have to be seen as to whether the Party I is entitled to claim benefit of provisions contained in Sec. 25-F of the said Act, 1947. In this connection, I can do no better than to have reference of decision given by the Hon'ble Supreme Court in case of *General Manager, Haryana Roadways... Appellant v/s Rudhan Singh... Respondent reported in (2005) 5 SCC 591* and which is placed before me by learned advocate of the Party II. The Hon'ble Supreme Court considered the scope of continuous service for not less than one year

provided under Sec. 25-F and 25-B of the said Act, 1947, and held that:

*"Two forty days work in a period of twelve months though workman had not been in service of employer for complete one year is enough to satisfy requirements of S. 25-F."*

24. In the present case, the Party I was in continuous service as Probationary Clerk for more than 330 days which is apparently more than 240 days in a period of 12 months from the date of his appointment as a Probationary Clerk. Therefore, and relying upon the decision given by the Hon'ble Supreme Court, I hold that provisions of Sec. 25-F of the said Act, 1947, are attracted. I agree with argument advanced by learned advocate of Party I. Termination of service of Party I is retrenchment as defined u/s 2(oo) of the said Act, 1947. The Party II did comply with conditions precedent to retrenchment of the Party I and which are laid down by Sec. 25-F. This is one more ground on which I hold that termination of service of Party I by the Party II w.e.f. 15-9-97 is illegal and unjustified. I answer the issue in affirmative.

25. *Issue No. 3:* As per provision contained in Section 11-A of the said Act, 1947, if the Labour Court, Tribunal or National Tribunal as the case may be is satisfied that the order of discharge or dismissal was not justified, it may, by its Award set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the Award of any lesser punishment in lieu of discharge, or dismissal as the circumstances of the case may require.

26. Learned advocate of the Party I argued that termination of service of the Party I is illegal and unjustified and, therefore, the Party I is entitled for reinstatement with full back wages and with continuity in service. He alternatively argued that, so far the back wages are concerned, at the most, the Party I will not be entitled for back wages for the delayed period of five years. He relied upon decision given by the Hon'ble Supreme Court in case of *Krishi Utpadam Mandi Samiti through its Secretary, Anand Nagar...Appellant v/s Arvind Chaubey and another...Respondent reported in (2002) 9 SCC 549*. In this reported case, after removal of respondent from service, he did not raise any dispute for seven years and only thereafter, sought a reference of the dispute to Industrial Tribunal. The Hon'ble Supreme Court held that the respondent would not be entitled to back wages for the period of seven years as he was the cause of delay.

27. One more decision relied upon by learned advocate of Party I is that from the case of *GM, Haryana Roadways... Appellant v/s Pawan Kumar... Respondent, reported in (2005) 12 SCC 459*. Decision from this reported case and which is relied upon by the learned advocate is already re-produced above.

28. Learned advocate of Party II to counter argument advanced by learned advocate of Party I argued that, the Party I did not raise the dispute for about five years from date of termination of service. There was no dispute in existence when the Party I approached the Assistant Labour Commissioner. Therefore, according to him, the Party I is not entitled to reinstatement in service with full back wages and with continuity in the service. He relied upon the decision given by the Hon'ble Supreme Court in case between *Assistant Engineer, C.A.D. Kota and Dhan Kunwar* reported in 2006 (111) FLR 792. In this reported case, there was delay of about eight years in raising industrial dispute. Division Bench of the Hon'ble Supreme Court observed in para 5 of the judgment that:

*"It may be noted that so far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case."*

Division Bench of the Hon'ble Supreme Court, in the above reported case held that the Labour Court should not have granted relief of reinstatement with 30% back wages.

29. In the present case, though it is admitted fact that the Party I raised dispute before Assistant Labour Commissioner, it is evident that he raised a dispute before Chairman of the Party II on 31-12-97 and then on 10-7-2001 by letters of which copies are produced at Exb. W-5 and at Exb. W-6. The dispute raised under letter dated 31-12-97 is within three months from the date of termination of his service. In view of this peculiar situation and of decision which is given by the three Hon'ble Judges of the Supreme Court in *Krishi Utpadam Mandi Samiti's* case referred to above. I do not agree with argument advanced by learned advocate of Party II.

30. Learned advocate of Party II further argued that the Party I is terminated from service on ground that the Party I was involved in fraud. This will certainly reveal that the Party II has lost confidence in the Party I. Therefore, according to him, it will not be appropriate to grant the relief as prayed for by the Party I. He relied upon decision given by the Hon'ble Supreme Court in case of *Workmen of Bharat Fritz Werner (P) Ltd.,... Petitioner v/s Bharat Fritz Werner (P) Ltd., anr.,... Respondent* reported in 1990 1 CLR 875. The Hon'ble Supreme Court observed in para 18 of the Judgment that:

*"Ever since the decision of the Federal Court in Western India Automobile Association v/s Industrial Tribunal, Bombay and ors., 1949 FCR 321, the settled position in law is that the Industrial Tribunal has the jurisdiction to direct reinstatement in appropriate cases. In a case of wrongful dismissal the normal rule adopted in industrial adjudication is to order reinstatement."*

*There are however, exceptions to this rule and even when it is found that the dismissal was wrongful, the workman has been denied reinstatement for the reason that it could not be expedient to direct reinstatement."*

The Hon'ble Supreme Court in para 20 of the judgment further observed that:

*"Reinstatement has not been considered as either desirable or expedient in certain cases where there had been strained relations between the employer and the employee, when the post held by the aggrieved employee had been one of trust and confidence, or when, though dismissal or discharge was un-sustainable owing to some infirmity in impugned order, the employee was found to have been guilty of an activity subversive or prejudicial to the interest of the Industry Hindustan Steel Ltd., v/s A. K. Roy 1970 (3) SCR 343. In cases where it is felt that it will not be desirable or expedient to direct reinstatement the workman is compensated monetarily by awarding compensation in lieu of reinstatement or loss of future employment."*

31. The Party II did not hold departmental inquiry against the Party I to prove that the Party I was involved in the fraud which is alleged to have been taken place in the department where he was working. Since he was working as a Probationary Clerk at the relevant time, in the Bank, it can very well be said that the post held by him had been one of trust and confidence. There is no sufficient and convincing evidence on behalf of Party II to hold that, the Party II lost confidence in the Party I and that there is strained relation between the two.

32. If termination of service is proved to be illegal or unjustified in absence of any impediments or exceptional circumstances, normal rule or practice is to grant relief of reinstatement with back wages. It is for the employer to establish existence of exceptional circumstances for departure from such normal rule or practice. I am satisfied that termination of service of Party I by the Party II is illegal and unjustified. The affidavit of General Manager of Party II does not establish such exceptional circumstances to depart from normal rule or practice awarding reinstatement with full back wages. There is also nothing in the affidavit to prove that the Party I is gainfully employed during the enforce idleness. In view of this position above discussion, provisions contained in 11-A of the said Act, 1947, and relying upon decision given by the Hon'ble Supreme Court in case of *Krishi Utpadham Mandhi Samiti* referred to above, I hold that the Party I is entitled to reinstatement with full back wages except for the delayed period which is approximately of five years from 15-9-97 to 6-11-2002, with continuity in service and with consequential benefits. I answer the issue accordingly.

As a result of findings given to issue Nos. 2 and 3, I proceed to adjudicate the dispute by passing order as follows:

**ORDER**

1. It is hereby adjudicated that the action of the management of the Mapusa Urban Co-op. Bank of Goa Ltd., Mapusa, Goa (Party II) in terminating the services of Shri Deepak Mathkar, Clerk (Party I) w.e.f. 15-9-1997 is illegal and unjustified.
2. Termination of service of Party I/Workman by the Party II is set aside.
3. It is hereby adjudicated that the Party I/Workman is entitled to reinstatement in service of Party II with back wages except for the period from 15-9-97 to 6-11-2002, with continuity in service and with consequential benefits.
4. No order as to costs.
5. The Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-  
Dilip K. Gaikwad,  
Presiding Officer,  
Industrial Tribunal-  
cum-Labour Court-I.

**Notification**

No. 28/18/2007-LAB/40

The following Award passed by the Industrial Tribunal of Goa at Panaji-Goa, on 06-12-2007 in reference No. IT/106/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 4th January, 2008.

**IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT-I AT PANAJI**

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/106/99  
(Old Ref. No. CGIT-2/76/1999)

Kishore Khandeparkar,  
R/o St. Cruz,  
Bandar,  
Tiswadi, Goa.

... Workman/Party I

V/s

The Regional Manager,  
Indian Overseas Bank,  
Regional Office,  
Salgaocar Centre, II Floor,  
Panaji, Goa. 403 001.

... Employer/Party II

Workman/Party I is represented by Adv. B. Harmalkar.

Employer/Party II is represented by Adv. P. J. Kamat.

**AWARD**

(Passed on this 6th day of December, 2007)

1. This is a reference under sub-sections 1(d) and 2A of Section 10 of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

2. Facts of present reference, stated in brief, are as follows:

The Central Government of India in exercise of powers conferred on it by Section 10(1)(d) read with sub-section 2A of the said Act, 1947, under order dated 30-3-1999 had referred following dispute to Central Government Industrial Tribunal-cum-Labour Court-II, Mumbai, for adjudication:

(1) Whether the action of the management of Indian Overseas Bank in terminating the services of Shri Kishore Khandeparkar, w.e.f. 9-2-1997 is legal and justified ?

(2) If not, to what relief the workman is entitled ?

3. In response to notices, both parties put their appearance in the Central Government Industrial Tribunal-cum-Labour Court-II, Mumbai. Party I/Workman presented his claim statement on 29-4-1999 at Exb. 5. It appears from claim statement that the Party I was appointed on the post of Temporary Messenger during periods from 3-4-1995 to 18-3-1995, from 3-5-1995 to 1-6-1995, from 24-7-1995 to 19-8-1995 in Panaji Branch, during periods from 23-8-1995 to 29-9-1995, 23-9-1995 to 21-10-1995, from 24-10-1995 to 21-11-1995 in Corjuvem Branch, during periods from 24-11-1995 to 22-12-1995, from 26-12-1995 to 23-1-1996 in Panaji Branch, during periods from 25-1-1996 to 22-2-1996, from 24-2-1996 to 23-3-1996 in Corjuvem Branch, during period from 27-3-1996 to 24-4-1996 in Panaji Branch, during period from 27-4-1996 to 25-5-1996 in Corjuvem Branch, during period from 29-5-1996 to 26-6-1996 in Panaji Branch, during period from 29-6-1996 to 27-7-1996 in Corjuvem Branch, during periods from 1-8-1996 to 30-8-1996, from 3-9-1996 to 1-10-1996 from 5-10-1996 to 2-11-1996, from 6-11-1996 to 5-12-1996, from 9-12-1996 to 7-1-1996 and lastly during period from 10-1-1997 to 8-2-1997 in Estevem

Branch of the Party II Bank. According to the Party I, the mode of employment adopted by Party II in engaging his services was against settled principles of labour laws. The Party II has taken undue advantage of his unemployment which amounts to unfair labour practice. In spite of his request and notice dated 26-5-1997 the Party II did not provide employment to him after 8-2-1997 which amounts to termination of his service. He has worked in establishment of the Party II for more than 240 days during twelve calendar months preceding termination of his service. He has not been given one month's notice or he has not been paid in lieu of such notice, wages for the period of the notice, and retrenchment compensation. Termination of his service is illegal and unjustified. Therefore by presenting the claim statement he has prayed for direction to the Party II to reinstate him in the service with full back wages and with continuity in the service with effect from 12-2-1997.

4. The Party II filed its written statement on 17-6-1999 at Exb. 7 and thereby resisted claim made out by the Party I. It appears from written statement that the Party I was appointed temporarily for fixed periods during vacancy of permanent messenger under separate appointment letters. Such appointments came to end on last date of each of the periods. It is not the case of illegal termination of service. The Party I is not entitled to the relief as prayed for.

5. The Party I submitted rejoinder on 19-7-1999 at Exb. 9. He denied in the rejoinder all contentions which are raised by the Party II in written statement and which are adverse to his interest. It is needless to reiterate the denials.

6. On basis of pleadings the then Presiding Officer of Central Government, Industrial Tribunal-cum-Labour Court II, Mumbai, framed issues on 31-8-1999 at Exb. 11. The issues are as follows:

1. Whether the workman is in continuous service as contemplated u/s 25-B of the I. D. Act, 1947 ?
2. Whether the service of the workman was terminated without following due process of law ?
3. Whether the action of the management of the Indian Overseas Bank in terminating the services of Khandeparkar w.e.f. 9-2-1997 is legal and justified ?
4. If not, to what relief the said workman is entitled to ?

7. In pursuance of order number L-12012/105/98-IR(B)(II) 16-8-1999 issued by the Government of India, Ministry of Labour, New Delhi, the then learned Presiding Officer of Central Government, Industrial Tribunal-cum-Labour Court II, Mumbai, transferred the

reference which was numbered as CGIT-2/76 of 1999 to this Industrial Tribunal-cum-Labour Court for disposal according to law.

8. The Party II by making amendment in the written statement further pleaded that all appointments of Party I were for specific periods and that the said appointments came to end by efflux of time. The mode in which services of the Party I were engaged from time to time are neither against principles of labour laws nor it has taken undue advantage of his unemployment. The Party I is not entitled to direction from this Industrial Tribunal in regard to reinstatement with full back wages and with continuity in service.

9. The Party I, after amendment by Party II in written statement, submitted additional rejoinder on 30-3-2000 at Exb. 5. Contentions which are raised by Party II under the amendment are denied by him in the rejoinder.

10. The Party I examined himself at Exb. 8 while the Party II examined its Industrial Relation Officer, S. B. Balu, working in Panaji Branch, at Exb. 9. I have gone through the evidence. Learned advocate of the Party I was not present at the time of argument. Learned advocate of the Party II filed written argument (Exb. 11).

11. My findings on the above issues are as follows:

- Issue No. 1 : In affirmative.
- Issue No. 2 : Does not survive.
- Issue No. 3 : In affirmative.
- Issue No. 4 : In negative.

#### REASONS

12. Issue No. 1:- Section 25-B covered by Chapter V-A of the said Act, 1947 defines continuous service as follows:

*"For the purposes of this Chapter,—*

- (1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*

- (a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
- (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
  - (ii) *two hundred and forty days, in any other case;*
- (b) *for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
- (i) *ninety-five days, in the case of a workman employed below ground in a mine; and*
  - (ii) *one hundred and twenty days, in any other case;*

*Explanation— For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—*

- (i) *he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the Industrial establishment;*
- (ii) *he has been on leave with full wages, earned in the previous years;*
- (iii) *he has been absent due to temporary disablement cause by accident arising out of and in the course of his employment;* and
- (iv) *in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks."*

13. Admittedly, the Party I was appointed on the post of Temporary Messenger during periods from 3-4-1995 to 18-3-1995, from 3-5-1995 to 1-6-1995, from 24-7-1995 to 19-8-1995 in Panaji Branch, during periods from 23-8-1995 to 29-9-1995, 23-9-1995 to 21-10-1995, from 24-10-1995 to 21-11-1995 in Corjuvem Branch, during periods from 24-11-1995 to 22-12-1995, from 26-12-1995

to 23-1-1996 in Panaji Branch, during periods from 25-1-1996 to 22-2-1996, from 24-2-1996 to 23-3-1996 in Corjuvem Branch, during period from 27-3-1996 to 24-4-1996 in Panaji Branch, during period from 27-4-1996 to 25-5-1996 in Corjuvem Branch, during period from 29-5-1996 to 26-6-1996 in Panaji Branch, during period from 29-6-1996 to 27-7-1996 in Corjuvem Branch, during periods from 1-8-1996 to 30-8-1996, from 3-9-1996 to 1-10-1996 from 5-10-1996 to 2-11-1996, from 6-11-1996 to 5-12-1996, from 9-12-1996 to 7-1-1997 and lastly during period from 10-1-1997 to 8-2-1997 in Estevem Branch of the Party II Bank. His appointment for each of the periods was under separate appointment letters of which xerox copies are produced at Exb. W-1 to Exb. W-27. If these different periods of his appointments are taken into consideration it can certainly be said that he was not in uninterrupted service with effect from 3-4-1995 to 8-2-1997 as a Temporary Messenger in establishment of Party II Bank. In other words, he cannot be said to be in continuous service for the said period from 3-4-1995 to 8-2-1997. Obviously, service rendered by the Party I during these break up periods will not come within the scope of provision contained in Section 25-B (1) of the said Act, 1947.

14. The Party I is not provided with employment with effect from 9-2-1997. Last date of his service as Temporary Messenger was 8-2-1997. He has actually worked under the Employer/Party II for three hundred and twenty one days period of twelve calendar months, that is, from 9-2-1996 to 8-2-1997, preceding the date of his last service. The total service rendered by him during the period of twelve calendar months preceding the date 8-2-1997 will certainly attract provisions contained in Section 25-B(2)(a)(ii) of the said Act, 1947. I, therefore, answer the issue in affirmative.

15. *Issue Nos. 2 and 3:* For the sake of convenience and to avoid repetitions I am deciding these two issues together.

Evidence of Party I supported by letter produced at Exb. W-28 makes it clear that the Party II terminated service of Party I with effect from 12-2-1997 after closure of working hours. The Party I is claiming that he has not been given one month's notice in writing or has been paid in lieu of such notice, wages for the period of the notice, and retrenchment compensation before termination of his service. On this ground he has challenged legality of the termination.

16. It appears from written argument (Exb. 11) submitted by learned advocate of Party II that the appointments of Party I as temporary messenger were for fixed periods. Case of the Party I is covered by Clause (bb) of Section 2(oo) of the said Act, 1947. Theory put-forth by Party I that he was in service for more than 240 days during twelve calendar months preceding the date of termination does not apply.



17. Section 2(o) of the said Act, 1947, lays down that—

*“Retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action but does not include—*

- (a) *voluntary retirement of the workman; or*
- (b) *retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or*
- (bb) *termination of the service of the workman as a result of the non renewal of the contract or the employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or*
- (c) *termination of the service of a workman on the ground of continued ill-health.*

18. In case of *Allahabad Bank appellant v/s Shri Prem Singh, Respondent*, reported in 1996 II CLR 826 and which is placed before me by learned advocate of the Party II, the appellant bank had appointed respondent on 13-6-1997 only for one day that is on 14-6-1997 in Lajpat Nagar Branch and on 15-6-1997 for one day in Karol Bagh Branch and for two days in Chandni Chowk Branch. Thereafter he was not given employment. Industrial Tribunal directed his reinstatement with back wages. The Appellant Bank carried the matter by way of appeal by special leave before the Hon'ble Supreme Court. It is held by the Hon'ble Supreme Court by virtue of letter of employment the service of the respondent stood automatically terminated. In the present case also by virtue of appointment letters service of Party I stood terminated on last date of each of the periods. His contract of service is neither renewed nor he is given fresh appointment with effect from 9-2-1997. Such termination of the service comes under excluded category, that is, under clause (bb) of Section 2(o) of the said Act, 1947. I, therefore, hold that, termination of service of the Party I does not amount to retrenchment. I agree with contention raised by learned advocate of the Party II in this regard in his written argument (Exb. 11).

19. Section 25F of the said Act, 1947, provides that—

*“No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—*

- (a) *the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of the notice;*

(b) *the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*

(c) *notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]”*

20. It is not in dispute that the Party II did not comply with conditions laid down by Section 25F before terminating service of Party I. Section 25F lays down conditions which are necessarily required to be complied with before retrenchment of workmen. In other words, this section is applicable only when there is retrenchment of workman or workmen. In the present case there is no retrenchment of the Party I from service of the Party II. I, therefore, hold that the issue as to whether termination of his service is without following due process of law, does not survive. I answer the Issue No. 2 accordingly.

21. Since the termination of service of the Party I does not amount to retrenchment as defined under Section 2(o) of the said Act, 1947, I hold that it was not necessary for the Party II to make compliance with mandatory provisions contained in Section 25F of the said Act, 1947 before terminating service of the Party I. Logical conclusion which can safely be drawn is that, termination of service of the Party I by the Party II is legal and justified. I, therefore, answer the Issue No. 3 in affirmative.

22. *Issue No. 4:* It appears from written argument (Exb. 11) submitted by learned advocate of Party II that since the appointments of the Party I were on temporary basis during vacancies of concerned employees, the Party I cannot claim reinstatement in the service with full back wages and with continuity in the service. He relied upon decisions from reported cases which I am going to refer.

23. The Hon'ble Supreme Court in case of *Allahabad Bank* reported in 1996 II CLR 826 and of which facts are already narrated above held that such respondent could not insist on his being continued to be employed and the appellant was under no legal obligation to employ him.

24. The Hon'ble Supreme Court held in case of *Director, Institute of Management Development U.P., Appellant v/s Smt. Pushpa Sri. Vastava*, reported in 1992 LAB. I.C. 2055 that—

*“Where the appointment is purely on ad hoc basis and is contractual and by efflux of time, the appointment comes to an end, the person holding such post can have no right to continue in the post. This*

*is so even if the person is continued from time to time on 'ad hoc' basis for more than a year. He cannot claim regularization in service on basis that he was appointed on ad hoc basis for more than a year. (The management was directed to consider sympathetically if regularization in service is possible)."*

25. The Hon'ble Supreme Court held in case of *Secretary, State of Karnataka and others, Appellant v/s Umadevi*, respondent, reported in 2006 II CLR 261 that, contractual appointments do come to an end at the end of the contract, and that, the temporary employees cannot claim to be made permanent on expiry of the term of appointment.

26. Decisions given by the Hon'ble Supreme Court and which are referred to above are squarely applicable to the present case. In the present case also appointments of the Party I as temporary messengers as stated earlier came to end on the last date of each of the periods for which those were made. In view of this position and relying upon decisions given by the Hon'ble Supreme Court, I hold that the Party I is not entitled to the relief as prayed for. My answer to the issue is in negative.

As a result of findings given to the issue Nos. 3 and 4, I proceed to adjudicate the dispute by passing order as follows:

#### ORDER

1. It is hereby adjudicated that the action of the management of Indian Overseas Bank in terminating services of Shri Kishore Kandeparkar, w.e.f. 9-2-1997, is legal and justified.
2. It is hereby adjudicated that the Party I/Workman is not entitled to any relief.
3. No order as to costs.
4. The Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-

Dilip K. Gaikwad,  
Presiding Officer,  
Industrial Tribunal-  
-cum-Labour Court-I.